LEGISLATIVE LIBRARY OF BRITISH COLUMBIA
3 3298 00278 7423

RESPONDING TO INCIDENTS OF RACISM AND HATE: A HANDBOOK FOR SERVICE PROVIDERS

February 2003

Developed by the British Columbia Human Rights Coalition in partnership with the Ministry of Community, Aboriginal and Women's Services, Settlement and Multiculturalism Branch and the Ministry of Public Safety and Solicitor General, Victim Services Division

BRITISH COLUMBIA

DO NOT REMOVE FROM LIBRARY USE ONLY

DOC
BC
H832
D:R47
2003
c.3

TABLE OF CONTENTS

Purpose of the Handbook 1

Introduction 2

Part I: Racial Discrimination: A Definition 4

The Relationship of Racism and Multiculturalism 6
Manifestations of Racism 7
Prejudice and Bias 7
Discrimination 7
Hate 7
Organized Hate Groups 8
Individual and Systemic Racism 9

Part II: Responding to Racism 11

Prevention: The Organizational Response to Racism 11
Developing an Anti-Racism Committee 12
Education and Training 12
Designing a Human Rights Policy 13
Anti-racism/Human Rights Policies in the Unionized Workplace 14
Employment Equity 15
Service Delivery 15
Reaching Out 16
Resources 16
Representation: Assisting the Victim of Racism 17

Part III: Human Rights and Racism: Rights and Procedures 20

What is Discrimination? 21
Who are the Protected Groups? 21
Is it a Human Rights Complaint? 22
The Human Rights Administrative Process 22
Human Rights Legislation, Discriminatory
Publications and Hate Propaganda 24
Assisting the Victim in Filing a Human Rights Complaint 25
Resources 27

Part IV: Crime and Racism: Crimes motivated by hate, bias and prejudice 28

Hate, Bias or Prejudice Incident 29
Hate, Bias and Prejudice Crimes: An Overview 30

Hate Propaganda Offences 30
Crimes with a Hate/Bias Motivation: Criminal Code Sentencing Provisions 31
Assisting the Victim in Filing a Complaint 32
The Crime Victim Assistance Program 33
Program Areas 34
Direct Services to Victims 34
Toll-free Victims Information Line 34
Support for the Provincial Associations 35
Victim Notification Unit 35
Leadership 35
Crime Victim Assistance Program 35
An Overview of the *Crime Victim Assistance Act* 36
Communities and Individuals Targeted by Hate Groups 37
Resources 37

Part V: Remedies for Victims of Racism 39

Part VI: Community Development: Involving the whole community in responding to racism 42

Pulling the Community Together 42
Overall Goals and Objectives 42
Building Community Resources and Responses 43
Prioritize Issues 43
Developing Issues in the Community 44
Define the Issue 44
Research 44
Designing a Strategy 45
Before you Leap... 46
Evaluation 47

Conclusion 48

Appendix 49

PURPOSE OF THE HANDBOOK

This handbook has been developed to give professional service providers access to the information, skills and resources required to support victims of racism and to respond effectively to issues of racism that arise in the community. As service providers you already work with victims of racism in one arena or another. This manual will provide you with an integrated approach that can be used both in your work and the community at large. Over the past few years, many consultations have been conducted on the issue of racism, and community and government workers have overwhelmingly cited lack of support and tangible remedies for its victims as one of their most important issues. You have also clearly indicated that something is needed to correct the situation. Regardless of where you work, the rules for institutional change, representation of victims, and capacity building in the community remain the same. It is our hope that this manual will lay out those rules in a way that builds on your existing knowledge and skills.

To have an integrated approach to the challenges of eliminating racism, one has to understand the many facets of victimization, from day to day racism at work, in public services, and personal life, to the exclusion which is structurally inherent in our institutions, and to the organized perpetration of hate propaganda and hate crimes. This involves examining current definitions, applicable laws and available remedies. In addition, we are forced to grapple with the interconnection of these facets both inside and outside of our own professional and personal lives, requiring a framework in which we can carry our work experience to the community, while integrating the experience of others into our workplace.

Dealing effectively with racism is clearly a time consuming and complex task, and is rooted in a history that is not easy to come to terms with, and not of our own making. However, we probably all agree that it is even more important today than ever before to examine and challenge the institutional and personal structures that maintain and permit the continuance of racism. The present situation in both the global and domestic arena demands that we have available all the resources and skill required to ensure full and equal voice and participation in our increasingly diverse society.

INTRODUCTION

The handbook begins by providing the information you need in order to start dealing with racism in your work as a service provider. It gives a definition of racism and our domestic and international commitments to its elimination. It looks at the manifestations of racial discrimination and how they interact with each other and the society at large. In addition, the manual provides a working definition of both individual and systemic racism. And it discusses some of the mechanisms that we have developed in our modern society to counter racism.
The second part of the handbook provides a framework for responding to racism. Responding to Racism, identifies and develops the four cornerstones of an overall anti-racist strategy; prevention, representation, remedies and community development. The section on prevention shows you how to work within your own organization, institution, union or company to prevent discrimination before it occurs. It includes the importance of developing internal anti-racism or human rights policies and procedures. Such a policy should explain discrimination and harassment, and provide a timely complaints procedure for dealing with racial discrimination and surrounding issues such as cultural conflicts, and complaints based in the grounds of place of origin and religious belief. As well, the handbook looks at how to design an education program, and provides an assessment of systemic tools such as employment and education equity.

The section on representation focuses on specific ways to assist the victim of racism in accessing his or her legal rights. In Human Rights and Racism: Rights and Procedures, we look at rights and procedures with regards to racial discrimination, and protection under the human rights legislation, including the administrative agencies that are responsible for its enforcement. This section provides the information required to determine whether or not a complaint constitutes legal discrimination and the process involved in assisting a victim of discrimination through the administrative process.

Crime and Racism provides the information you need to understand the law and to access the criminal justice system when you are assisting a victim of a racially motivated crime. It explains the laws that govern discrimination, racism, and crimes that are motivated by hate, prejudice or bias, and their administrative agencies. This section explains the criteria involved in filing a complaint under these laws and the administrative process involved. The role of the B. C. Hate Crimes Team, the Victims Services Division, and the Ministry of Community, Aboriginal and Women's Services assisting victims of hate/bias crime is included. There are also some special tips to help a victim of crime.

In the section on Remedies, we take a holistic approach to what is available for a victim of racism, be that under the human rights law, the criminal law, or simply under a workplace policy. As well, we look at some new and innovative remedies that we sometimes refer to as alternate dispute resolution.

In addition, you will find some tools for strategies for change in dealing with racism in your community. Under the heading Community Development, some practical suggestions are offered to aid in organizing your community to respond to an issue of racism, in setting up a relationship with the media in your community, in working with your schools to develop an anti-racist curriculum, and in developing a broad based anti-racist coalition in your community. We look as well at the potential for City, Municipal and Village Councils to develop race relations or diversity committees and anti-racist by-laws and licensing regulations.

PART I: RACIAL DISCRIMINATION: A DEFINITION

Most Canadians now accept that racism has largely come about as a result of our colonial legacy and its economic characteristics. Inherent in this history is the interchanging of assimilation and exclusion, practiced continually against the people of our First Nations, and adapted to each new minority that arrived to make a home in this country. And Canada is not unique in its history of racism. As one of the many signatories to the *International Convention on the Elimination of All Forms of Racism*, in 1969, we agreed to the following definition of racial discrimination found in Article 1:

> In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, social, cultural or any other field of public life.

We have agreed as well to Article 4 of the *Convention*, which states in part:

> States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form...

In the years that have followed the Convention's entry into force, Canadians, and specifically British Columbians have pursued a commitment to clearly identify and understand the different manifestations that racism takes and to pursue with vigilance the mechanisms required for its elimination. In many ways, entrenching the *Canadian Charter of Rights and Freedoms* into our Canadian Constitution was our way of legally binding ourselves to a commitment of equality. Section 15 of the *Charter* echoes the principles of the International Convention:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination, and in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Because the eradication of racism involves the very heart of our day-to-day lives with each other and in all our social structures and institutions, the process is often challenging and complex. In some ways we are just beginning to develop a working definition of racial discrimination, to recognize and understand its different manifestations, and their interaction, and to explore its remedies with an appropriate framework. Keeping in mind that this is a dynamic, changing area of knowledge, here are some of the words and concepts currently used in the debate on the elimination of racism.

The word "race" has appeared in many of Canada's laws and court decisions. Legislation concerning the deportation of persons of Japanese origin in the 1940's referred to "persons of the Japanese race", and the *Immigration Act* expressly allowed for distinctions to be made on the basis of race until the 1960's. Many people are surprised to learn the extent to which racism has existed and continues to exist in Canadian society. Black and Indian slaves were bought for many years in Canada, and legislation established separate schools for black children. Chinese, Japanese and South Asians in British Columbia were denied the right to vote, and the federal vote was not extended to aboriginal people until 1960. Today race is a prohibited ground of discrimination under all of our Canadian human rights laws.

The Nazis used artificial race distinctions to justify a policy of genocide, and more recently, certain countries such as South Africa, promoted racial policies by legitimizing the concept of race. "Apartheid", an Afrikaans word meaning "separateness" was the name of the South African government's policy of racial segregation. The placement of Canada's First People into residential schools was a similar policy of racial segregation.

The very concept of "race" is a controversial one for some, as it refers to the genetic, physical characteristics that allegedly are common to certain groups. Many people claim that the term "race" is scientifically meaningless, and that the acceptance of race as a legitimate categorization has in the past caused a great deal of harm. They say that instead of "race" we should refer to a person's "ethnicity". Ethnicity refers to a person's cultural background, including his or her language, origin and heritage. Everyone has an ethnic identity, which comprises the ideas, beliefs, values and behaviour that are transmitted from one generation to the next. Discrimination on the ground of ethnic origin is prohibited by every human rights law in Canada. The reason that human rights laws retain the word "race" is because the courts have determined that what is important is not the actual physical characteristic of a person, but how the perpetrator perceives the person.

In addition to the word "ethnicity", the words "visible minority" are sometimes referred to in the discussion of racism. The term "visible minority" refers to groups who share physically visible characteristics such as dark skin. This is a term which very specifically referred to a certain time and place, when it was true in Canada that people of colour were a minority relative to the majority of the population. The term formed a basis for government initiatives in the late 1970's when minorities in Canada became frustrated with federal multicultural initiatives that did not place enough emphasis on racism and its role in employment and service discrimination and racial violence. People of colour were frustrated by a promise to preserve and enhance culture that did not seem to carry a corresponding commitment to eradicate racism.

The term visible minority, although remaining in some legislation, is quickly losing its relevance as it is no longer applicable in our society. As well, it should be used with caution, because it often leaves out groups of people who commonly experience racial discrimination. It does not seem to include, for example, many Latin Americans, southern Europeans, and religious groups as well, such as Jews and Muslims. Our commitment to equality means that we must deal effectively with discrimination in its broadest context, so that all Canadians can participate in society to the fullest extent possible.

THE RELATIONSHIP OF RACISM TO MULTICULTURALISM

The development of multiculturalism in Canada has played a critical role in the way we identify racism and in the development of the rights of minorities within our ethnic composition. In her book, Race Relations and the Law [1984], Tannis Cohen explains Multiculturalism as follows at pages 3 and 4:

> Multiculturalism can be contrasted to assimilation and to the concept of the melting pot, which typifies intergroup relations in the United States. These concepts might be compared as follows:
>
> 1. Assimilation
>
> A + B + C = A
>
> In this equation, B and C assimilate in order to conform to the majority, A.
>
> 2. Melting Pot
>
> A + B + C = D
>
> In this equation, all groups adopt a new identity. In the United States, for example, individual cultures have been substituted for an "American" culture.
>
> 3. Multiculturalism
>
> A + B + C = A + B + C
>
> In this equation, all groups are able to keep their own identity.

The assimilationist model typifies Canada's approach to minority groups in the past. Since 1982, multiculturalism has been entrenched in Section 27 of the *Canadian Charter of Rights and Freedoms*, which states:

> This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

When Section 27 and Section 15, the equality rights provision, are read together they uphold the right of all groups in Canada to full equality while at the same time, preserving their language, culture, customs and identity. Or, to put it another way, every ethnic group in Canada has the right to preserve and develop its own cultural values within the Canadian context. As both Canada and British Columbia have proclaimed Multiculturalism Acts, these rights have both political and legal force.

In the human rights arena, the incorporation of multiculturalism into the rights paradigm is sometimes referred to as moving from a model of "identical treatment" to "accommodation of difference". The courts have used Section 27 of the *Charter* to declare certain legislation, such as *The Lords Day Act*, unconstitutional. This Act required Canadian stores to cease from doing business on Sundays, as Christian heritage declared this day as a "universal day of rest". But as not all Canadians are practicing Christians, the law had the effect of discriminating against store owners and consumers who practice other religions.

The implications of multiculturalism are far reaching in that they provide us with a framework that requires us to be inclusive with regards to the differences of others. Active racism involves the exclusion of others based in their difference. This exclusion can grow through several stages, commencing with prejudice and sometimes carrying through all the way to hate crimes such as "ethnic cleansing".

Manifestations of Racism

Prejudice and Bias

Prejudice, which literally means to "pre-judge", is an attitude toward a person or group. When applied to racism, prejudice refers to beliefs or attitudes about an individual or group based on negative or positive stereotyping. Because we learn to identify with the specific group to which we belong at a very young age, we can be easily taught to stereotype those who are different from us. Internalizing prejudice leads to bias, which is a predisposition to build on stereotypes. Prejudice and bias are important to understand because they affect and help to form the "climate" that we live and work in. And together, they form the motivation for discrimination. Because prejudice and bias are a state of mind, there is no law that prohibits them.

Discrimination

When prejudice and bias move from a state of mind to an action, the result is discrimination. In the ordinary sense of the word, discrimination usually means to treat a person or a group differently and negatively, because of prejudice and bias. So when it can be shown that behaviour and/or actions have an outcome of discrimination, legal rights enter the arena, as the role of law is to set standards for people's behaviour and actions.

Within the parameters of human rights, discrimination can also take a number of different forms. Either in the workplace, or in accessing public services, racial discrimination may take the form of differential treatment based in harassment, unequal pay or benefits, unequal advancement opportunities or unequal conditions of work or service provision. It can also take the form of hate propaganda. For the purposes of human rights, hate propaganda is defined in Section 7 of the *Human Rights Code* as:

> ...any (public) statement, publication, notice, sign, symbol emblem or other representation that...is likely to expose a person or a group or class of persons to hatred or contempt...because of...race, colour, ancestry, place of origin, religion...

Hate

When prejudice and discrimination come together in behaviour and actions that are criminal in nature, racism then takes the form of a hate/bias crime. Hate crimes can be hate propaganda offences where an individual advocates genocide or publicly incites/promotes hatred against an

identifiable group. A hate crime also includes any criminal offence where the offender is motivated by hate, bias or prejudice against an identifiable group, and the judge must consider this as an aggravating factor at sentencing.

> Pursuant to the *Criminal Code of Canada*, anyone who advocates or promotes genocide is guilty of an indictable offence. Genocide occurs where an individual with "intent to destroy in whole or in part an identifiable group, (a) kills members of the group, or (b) deliberately inflicts on the group conditions of life calculated to bring about its physical destruction" (Section 318). Identifiable group is defined as "any section of the public distinguished by colour, race, religion or ethnic origin."

With regards to hate propaganda, there are two possible hate/bias offences under Section 319 of the *Code*. Subsection (1) states that anyone who communicates statements in a public place that incites hatred against an identifiable group in such a way that causes a breach of the peace is guilty of an offence. Subsection (2) states that everyone who communicates statements, other than in a private conversation, which willfully promotes hatred is guilty of an offence.

Organized Hate Groups

There are more than 50 active white supremacist organizations in Canada today, ranging from Christian Identity, to neo-Nazi and racist skinhead groups. These groups are united by a shared belief in the notion that there are biologically distinct "races" which can be scientifically ordered in a hierarchy of morality, intellectual capacity, culture and civilization, that the "white race" of Northern Europe is morally and intellectually superior to all other "races" and that the "white race" is primarily responsible for human civilization and science. All other "races", i.e., Asian, African, American, et cetera are inferior, and it is the biological and moral destiny of the white races to bring civilization to the world.

A second ideological underpinning of much of the white supremacist movement is that the Holocaust did not occur, or that if Jews, Gypsies, communists, homosexuals, and people with mental and physical disabilities were murdered in Nazi concentration camps during World War II, their deaths were not part of any genocidal policy that was devised by Hitler and his followers.

Hate groups produce an alarming quantity of very sophisticated newsletters, journals, books, computer bulletin boards, and web pages of far better quality and quantity than most anti-racist organizations. They cannot be dismissed as merely marginal, fringe groups, but must be seen as a part of our social, economic and political system.

Individual and Systemic Racism

Individual and systemic racism are inextricably tied together, based in a history of individual and group prejudice acted out in the institutions that we have developed for our social and economic interaction. Most people don't have any trouble understanding individual racism, which is based on the notion of "negative differential treatment" of a person based on her or his colour, ethnic, ancestral and/or religious group. It can take the form of exclusion of that individual from all or part of an employment grouping, a social grouping or a public service. Or it can take the form of failing to accommodate a religious or cultural requirement, or ridiculing that requirement. And it can take the form of singling out the individual by taunting, humiliating, bullying or assaulting him/her. This treatment is based only on the group characteristics of the individual victim of racism. It is those characteristics that the perpetrator(s) perceives make the victim different from the "norm".

A typical example of this is found in the following case, *McKinnon v. Ontario (Ministry of Correctional Services)* [1996] C.H.R.R. NP/96-131 (Ont.Bd.Inq.):

> The complainant worked as a correctional officer. He is aboriginal. The Board of Inquiry found that he had been constantly called a series of racist "nicknames". He was teased about having "pow-wows". On one occasion a group of white officers donned feather Indian head dresses and imitated war cries when he entered the room.

The Board of Inquiry found that the individuals who did this knew the name-calling was offensive and management didn't make any serious effort to protect the complainant. The Board ordered the Ministry to pay compensation for lost wages and injury to dignity, and to promote the complainant as he would have been but for the discrimination. As well, the Board ordered each of the individuals engaging in the behaviour to pay compensation for the injury to dignity.

Systemic racism is more complex and difficult to understand. Systemic racism is sometimes referred to as institutional racism, and sometimes referred to as adverse effect discrimination, where a regulation or rule that is neutral on its face has a discriminatory outcome or effect. The Federation of Canadian Municipalities [1993] has defined systemic racism as follows:

> Systemic racism refers to discrimination that is part of an organizational system. Organizational arrangements within large institutions, such as traditional administrative practices and procedures, often determine how jobs are offered, to whom services are provided, facilities made available, and resources allocated. The attitudes and conduct of managers and administrators within an institution also influence who gets what, where and when.

A modern example of systemic discrimination can be found in a decision of the Canadian Human Rights Tribunal in 1997 called *National Capital Alliance on Race Relations v. Health and Welfare Canada* [1997], 28 C.H.R.R. D/179. The Tribunal found that visible minorities at Health Canada were denied opportunities to acquire managerial training and experience, and were less frequently asked to sit on candidate selection boards. It was found that these factors resulted in a significant under-representation of visible minorities in senior management positions. A memorandum from the Assistant Deputy Minister was entered into evidence stating the following at page D/210:

> [Visible minority] employees who are being considered solely for 'technical' positions seem to fare better than when being considered for management positions. The cultural differences are minimized when we are only looking for the scientific approach. However, when we start looking for the 'soft skills' such as communicating, influencing, negotiating ... quite often their cultural heritage has not emphasized these areas and they are at a disadvantage...
>
> [We] do business in the North American way – 'consensus reaching model' which to some cultures is very foreign.

It's possible that the Assistant Deputy Minister was not even aware that his views were prejudiced and his actions discriminatory. He or she was attempting to find the best managerial candidates that would fit into a traditional administrative system. However, the outcome was the exclusion of a group of employees based in a racial and cultural stereotype.

PART II: RESPONDING TO RACISM

Given the tenacious nature of racism in society today, we cannot expect to eliminate it overnight. But there are some general areas we can all work in to ensure that we are making progress, albeit sometimes more slowly than others. Community organizations who actively work on the elimination of racism tend to believe that there are four cornerstones to an overall anti-racist strategy:

- Prevention: Making sure the necessary education is done in your organization, company, union or community to help people understand the nature of prejudice and the definition of racism. Assuring that wherever you work or provide service there is an anti-racism policy in place with complaint procedures and appropriate remedies. Educating your colleagues and the community at large in pro-active measures to achieve equality such as employment and education equity. Working with community groups, municipalities and the media to identify and eliminate organized hate groups.

- Representation: Making sure that victims of racism can take advantage of their legal rights. Being able to determine the difference between a human rights complaint and a crime. Knowing when to refer to the Victim Services Division, the police, the Hate Crimes Unit, the Human Rights Commission or Tribunal. Knowing how to refer a victim of racism to an appropriate advocate.

- Remedies: Assisting the victim of racism in selecting a remedy that will restore his or her dignity that everyone in the community can learn from, and that will work towards preventing the incident from reoccurring.

- Community Development: Working with the whole community to improve the rights of victims of racism, and to move to an outcome of equality.

As service providers, we will already have the skills required to develop one or more of these areas, and perhaps will only need to adapt those skills to respond effectively to issues of racial discrimination. In other areas, we may need to learn the law, to research new resources, or to make new connections to develop coalitions.

PREVENTION: THE ORGANIZATIONAL RESPONSE TO RACISM

Increasingly, and for many different reasons, institutions and organizations are providing tools and implementing policies for preventing racism before it happens. Employers and institutions realize that an environment of racism creates working and service relationships that are divisive, harmful and unproductive, and often culminate in bitter and expensive litigation where everybody loses. As service providers we must look to the organizations we work in, the services that we provide, and the larger community that we and our families participate in on a daily basis. The best place

to start is our own organizations. If we are able to develop the mechanisms required to prevent racism at work, the benefits will flow outwards to our clients and our community.

Developing an Anti-Racism Committee

Developing and naming a workplace committee that is responsible for the work involved in eliminating racism is a great first step. The committee should involve people at all levels of the workplace, human resources managers, union representatives, if the workplace is unionized, and each different area of work involved. The role of the committee is to develop time lines and to initiate and design a strategic plan that can be put into action in a step-by-step process. The goal of the committee is as follows:

- to provide ongoing mandatory anti-racist education and training to all employees;
- to set up a policy or contract language that provides a definition of racial discrimination, a complaints procedure and remedies;
- to develop an appropriate employment equity program;
- to provide occasional information workshops on specific anti-racist issues, such as the identification and elimination of organized hate groups in the community;
- to design and integrate the above into the provision of services;
- to participate in and share with the larger community.

Education and Training

The purpose of education in designing a racism free workplace is primarily to help everyone come to terms with his or her prejudice, and to participate fully in the development of those policies designed to create equality. Anti-racism training must be mandatory to be effective, it must send a message that all employees are necessary to make a change. Mandatory training also reflects an employer's commitment to the seriousness of eliminating racism. Policies and procedures cannot work unless everyone plays a part in their development and understands their purpose. However, if everyone is to be involved, anti-racism education must ensure that all participants have a sense of safety and mutual respect, and there is a learning environment that nurtures self-esteem and mutual respect.

The first step in the education process should be designed to heighten people's awareness and behavioural and ethical commitment to fighting prejudice and racial discrimination. The Anti-racism Response Training Program, developed by Ishu Ishiyama, Ph.D. is an excellent example of this. The A.R.T. approach uses a skills-training format to enhance readiness to respond to racist situations cognitively and behaviourally, and to empower otherwise passive and silent bystanders to become more active and vocal.

The second step in the education process is that of understanding legal rights and responsibilities with regards to racism, and enshrining these in a policy or a collective agreement. Once the policy has been completed, all employees should be made familiar with it. The third step is diversity training, and the development of appropriate equity programs designed to achieve inclusivity and diversity.

Designing a Human Rights Policy

Although this manual focuses specifically on victims of racism, the rights involved flow from human rights legislation, and protect people from discrimination and harassment on all the prohibited grounds listed in the *B. C. Human Rights Code*. These grounds include race, national or ethnic origin, colour religion, age, sex, sexual orientation, marital status, family status, mental or physical disability or conviction for criminal offence where the crime is not related to a necessary condition of employment. Many organizations prefer a general human rights policy, where all groups are protected. As well, human rights are beginning to focus on an interactive approach toward prohibited grounds, where a person experiences discrimination based on more than one ground. An example of this might be a woman of colour where the discrimination is based in sex and race at the same time.

The purpose of an anti-racism, or a human rights policy in the work place is to gain a common understanding of appropriate anti-racist behaviour and actions, and to provide a mechanism to remedy discriminatory practices when they occur. In order to be effective they must contain a timely and fair procedure for investigating complaints of racism, and remedies that address and stop systemic issues, and make the victim of discrimination whole. Policies are an employer's way of addressing liability and complying with the law. They usually start with a general statement of intent or principle such as this one:

> ...is committed to the principle that all employees of ... have the right to work in an environment that asserts and supports their fundamental rights, personal worth and human dignity. Under the *B. C. Human Rights Code*, every person has the right to freedom from discrimination and harassment, and ... acknowledges its responsibility in protecting this freedom. ... will not tolerate discrimination in any form, and considers it to be a serious offence subject to a range of disciplinary measures.

Following this, the Policy will usually describe the behaviour or actions that are prohibited:

> Discrimination, and/or harassment, for the purposes of this policy is behaviour or action which is:
>
> Discriminatory in nature and/or objectionable based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, political belief, mental or physical disability or conviction of a criminal offence.
>
> Objectionable behaviour includes, but is not limited to:
>
> - verbal abuse or threats
> - offensive remarks, jokes, innuendoes or taunting
> - display of pornographic, racist or other derogatory material.

At the heart of the policy is the complaints process which must be appropriate and timely. Most complaints procedures allow two different channels for dealing with a complaint. If the victim of discrimination believes that an appropriate remedy would be an acknowledgment or an apology from the perpetrator(s), he or she would likely choose to file an informal complaint which would involve some sort of mediation. If the complaint is more serious, then a formal complaint would be filed. Formal complaints involve an investigation, and so a statement of allegation must be signed by the victim. Following the investigation, a determination is made, and an appropriate remedy is provided.

Remedies under these anti-racist or human rights policies are required to focus on the victim of discrimination, and on the prevention of a recurrence, they do not place an emphasis on punishing the perpetrator. If it is found that racism or discrimination did occur, then the victim must be "made whole". Preventing a recurrence of the discrimination might involve special education of the perpetrator(s), and/or some form of restructuring if the discrimination is systemic.

Anti-Racism/Human Rights Policies in the Unionized Workplace

Because an employer is responsible for discriminatory acts in the workplace, he or she has the right, indeed the responsibility for whatever policies or procedures are put in place to deal with racial discrimination. However, in a unionized work environment the union is the legal representative of union employees with regards to all working conditions. The union and the employer work together to negotiate these working conditions that are signed off by both parties in a collective agreement. Disputes arising under the collective agreement are resolved by the grievance procedure, and if that doesn't work, an independent arbitrator, agreed to by both parties, makes a determination. The legal and formal nature of this process demands that anti-racist and or human rights policies be worked out in a harmonious manner.

This can be done in one of two ways. A clause can be negotiated into the collective agreement that indicates that the employer and the union agree that complaints of discrimination will be investigated and remedied through the grievance/arbitration process. Unions can get assistance with language and process for doing this through their local Labour Council, the B. C. Federation of Labour, the Canadian Labour Congress or the B.C. Human Rights Coalition. Employers can get assistance from the Employers Council of British Columbia or the B.C. Human Rights Coalition. Employers under federal jurisdiction can get assistance from the Canadian Human Rights Commission or the B. C. Human Rights Coalition. If this is not a desirable route, then employers can negotiate with the union to accept an independent policy such as described above. However, because the union has a duty to represent all its members in any workplace dispute, representation must be offered to everybody in a complaint of discrimination who is also a member of the union.

Employment Equity

If the goal of anti-racist policies is to provide a remedy for a victim of racism, then employment equity aims to provide a systemic remedy to historic patterns of disadvantage. A commitment to employment equity requires that we assess employment systems in place at work to ensure that barriers, such as "old boys" and "old girls" networks are not in place, which give certain employees a discriminatory advantage over others. This means we may want to advertise new job openings in a broader market than previously by using ethno-specific media and approaching organizations such as immigrant societies, multicultural organizations and First Nations. Employment equity also requires us to examine workplace procedures, such as hiring policies, interviewing, evaluation and promotion to ensure these are not biased.

Under the federal jurisdiction, there is an *Employment Equity Act*, which applies to the Government of Canada as an employer, and all employers who contract with the Government of Canada. This Act requires that employers with more than 100 employees take positive steps to rectify the historic disadvantage of women, people with disabilities, visible minorities and aboriginal people. It argues that because of past discriminatory practices, through no fault of their own, these four groups of people are under represented in the work place. Consequently, federal employers must take a tally of employees in these groups and compare those numbers to group members in the population at large. If employers do find under representation, they must submit a proposal to the Human Rights Commission with a timetable and strategy to develop a more equitable workforce.

In British Columbia, employment equity plans as described above, are voluntary. But if employers wish to engage in such a plan, there are provisions to do so under Section 42 of the *British Columbia Human Rights Code*. If your workplace is unionized, the union must agree before an employment equity plan can be implemented.

Employment Equity is our newest equality rights tool, and is somewhat controversial to some people, who view it as "reverse discrimination", rather than a process to reverse past discrimination. However, it is the only tool we have that moves towards a workforce that is truly reflective of the people we serve. All Canadians deserve to see themselves at every level of our society, as peers, leaders and role models. As professional service providers, we have a special responsibility to try and ensure that our clients, patients and students find their service delivery equitable.

Service Delivery

The responsibility of organizations and institutions to provide their employees with an environment free from discrimination also extends to the provision of any public service. As service providers we carry out that responsibility on a daily basis. It is up to the Anti-Racism Committee to integrate the principles of your strategic plan into the service of your organization.

- Education and Training:

  If you offer any training to the public, you can insert an anti-racism component. You can make your offices a "racism free zone", by intervening immediately in any discriminatory conduct or behaviour. Check out the pictures on the wall to ensure that everybody is included. Make sure that any publications that assist in educating the public in legal rights and responsibilities are freely available.

- Complaints Policy for Clients:

  Just as you and your colleagues need an anti-racism or human rights policy, so do the people you serve. The statement of intent of the policy should be simple and straightforward and in a location that is easily accessible. The complaints procedure should be very quick and easy to follow. And, as in your workplace policy, remedies should not be punitive, but should address the question of making the victim whole, and if a systemic remedy is necessary, should recommend structural changes to prevent recurrence.

Reaching Out

The final step is to make a space for everything you've learned in the community at large. Start with professional organizations and coalitions connected to your work. Once you've completed the groundwork, the rest is easy. You have model policy and procedures to share with others and you will be assisting your clients to be protected from discrimination within their whole community. Think as well of your personal involvement in the community and that of your family. Do you have children who play organized sports? Are you a member of a local church or community centre? If you have worked to make your anti-racism program successful, there will already be benefits you can show people. Your work and service environment will be more congenial and better integrated. And your clients will be more trusting of your services. And the ultimate benefit for victims of racism is that they will find themselves in a community that works together to prevent discrimination from occurring in the first place.

Resources to Assist Organizations in Responding to Racism

Ministry of Community, Aboriginal and Women's Services
Settlement and Multiculturalism Branch
2nd Floor - 1125 Howe Street
Vancouver, B.C. V6Z 2K8
Telephone: 604-660-2203
Fax: 604-660-1150
Website - www.gov.bc.ca/mcaws/

Human rights/anti-racism education, policies and policy administration:

B. C. Human Rights Coalition
#1202 - 510 West Hastings Street
Vancouver, B.C. V6B 1L8
Telephone: 604-689-8474
Fax: 604-689-7511
Toll-free: 1-877-689-8474
Email: info@bchrcoalition.org
Website - www.human-rights-coalition.bc.ca

The Anti-racism Response Training (A.R.T.) Program
F. Ishu Ishiyama, PhD
Faculty of Education, University of British Columbia
Email: ishu.ishiyama@ubc.ca

Education on organized hate groups and their symbols:

B.C. Hate Crime Team
C/o Major Crimes Section – CIU
"E" Division. HQ – Surrey Satellite
Complex 12992 – 76th Avenue
Surrey, B. C. V3W 2V6
Telephone: 604-660-2659
Toll-free: 1-800-563-0808
Email: sean.mcgowan.@rcmp-grc.gc.ca

Canadian Anti-racism and Research Society (CAERS)
PO Box 2783
Vancouver, B.C.
Telephone: 604-687-7350
Website: www.antiracist.com
Email: caers@telus.net

Representation: Assisting the Victim of Racism

When discrimination does occur, we need to be able to assist the victim of racism to find an appropriate avenue of investigation and redress. In any organized effort to respond to discrimination and hate, individual and group advocacy is an important and necessary component. The success of advocacy lies in being able to offer a quick and informed response to a victim of racism, and to provide the support necessary to assist him or her through the appropriate process.

When someone approaches with a complaint of racism, the first step is to make sure you thoroughly understand the nature of that complaint. Is it prejudice which requires an educational solution, is it discrimination that requires a human rights solution, or is it a crime that requires police intervention? There are circumstances where more than one avenue is required, for instance, a racial harassment where an assault has occurred. This would be both a human rights matter, and a criminal matter.

When the nature of the complaint has become clear to you, the second step is to understand the law in the jurisdiction in which the complaint arises. You may choose to refer the victim of discrimination to a specialized service within that jurisdiction, but in any event before you can do that, you must be able to determine what rights are involved, and what administrative process must be followed.

The third step is to find the appropriate advocate to assist the victim of racism through the process of accessing his or her rights. If the complaint is one of prejudice, or discrimination where there is an internal procedure, the advocate might be the complainant's union representative, or the person in the company or service who administers the policy. If the complaint requires a human rights intervention, there are organizations that will assist with advocacy before the Canadian Human Rights Commission. Currently, in B.C., the B.C. Human Rights Coalition and the Community Legal Assistance Society have contracted to provide representation for complaints referred to the B.C. Human Rights Tribunal. In the federal jurisdiction, the Canadian Human Rights Commission provides legal representation to complainants at a Tribunal. If the complaint is criminal in nature, Victim Services Division, Ministry of Public Safety and Solicitor General, works in conjunction with the police to provide specialized support and advocacy for victims of all types of crime.

The role of the advocate is central to the representation of victims of racism. Advocates can be lawyers, but it is not necessary. They do need to understand and have training in the necessary elements required to fully support a victim of discrimination, either by direct assistance or referral to those with the necessary expertise. Throughout the definition, analysis and interpretation of a complaint of discrimination, and in exploring appropriate remedies, the advocate must act only in the best interest of the victim.

Over the years, community advocates have developed some guidelines and rules that help to ensure that the people we represent have the best possible chance of achieving their remedies, be those individual or systemic.

- The advocate and the complainant are partners together in solving the discrimination. The complainant brings the experience of discrimination and deserves to have his or her whole story heard and understood. This might require a translator.

- The expertise of the advocate is to apply both legal and administrative knowledge to the complaint, and to suggest possible avenues to the complainant. This includes referring the complainant to other channels where necessary, such as counseling, community support, etc., and to accompany the complainant where this is necessary.

- The advocate may not benefit personally, financially or otherwise in assisting a complainant. He/she may not represent both sides of a complaint unless both parties involved request assistance in mediation. Where there is a conflict, the advocate will refer the complainant to more appropriate representation.

- If the parties agree that the advocate should represent the complainant, the advocate should obtain a written letter authorizing this.

- The advocate must agree that all information concerning the affairs of the complainant should be kept in strictest confidence, unless disclosure is expressly authorized by the complainant, or required by law.

- The advocate must agree that he or she will not withdraw from the complainant without good reason and upon notice appropriate in the circumstances.

PART III: HUMAN RIGHTS AND RACISM: RIGHTS AND PROCEDURES

Although we know that in the long run, the elimination of racism will depend on institutional and community change, incidents of racial discrimination are going to continue for some time to come. When these occur we turn to human rights legislation which works in the public arena to provide protection, procedures and remedies for victims of racism. Because human rights flow from the *Charter of Rights and Freedoms*, and are available to all of us simply by virtue of being human, human rights legislation takes precedence over all other legislation. Section 4 of the *B. C. Human Rights Code* states:

> If there is a conflict between this *Code* and any other enactment, this *Code* prevails.

Human rights legislation prohibits discrimination in employment; trade unions and occupational associations; services to the public; the purchase of property; and tenancy. It also prohibits discriminatory publications that are not private, or hate messages which are telecommunicated, and are likely to incite hatred or contempt against a protected group. In addition, all human rights legislation exempts certain groups from a complaint if the group is charitable and attempting to address past disadvantage. An example of this would be a non-profit native housing society that is not required to provide housing to non-native people. And finally, all human rights legislation has some provisions for employment equity, although only in the *Canadian Human Rights Act* is this mandatory.

In British Columbia, human rights law operates in two jurisdictions, federally under the *Canadian Human Rights Act*, which is administered by the Canadian Human Rights Commission, and provincially under the *British Columbia Human Rights Code*, which will continue to be administered by the British Columbia Human Rights Commission until April 2003 when responsibility will shift to the B. C. Human Rights Tribunal. The *Canadian Human Rights Act* governs employment and services of the federal government and its ministries, arms of the federal government such as the R.C.M.P., and Employment Insurance, and anything that is regulated by the federal government. Federal regulation covers all telecommunications as they are governed by the C.R.T.C., all inter-provincial transportation, such as Air Canada and Via Rail, and it covers banks, but not credit unions. Unions attached to any of the above also fall into the federal jurisdiction. Everything that is not in the federal jurisdiction is covered by the provincial legislation.

When we are assisting a victim of racial discrimination, we have to determine whether or not the behaviour or actions being complained of constitute discrimination as defined in the human rights law.

What is Discrimination?

When we speak of racial discrimination, or discrimination based in religious belief, we mean that the victim has been singled out for differential treatment for reasons that are based in his or her colour or religion. We must be able to show two factors. First, the differential treatment: For instance, if there is a situation at work where a manager treats everyone equally badly, this is not discrimination. It may be a violation of the collective agreement, or there may be some other right that has been infringed upon, but it does not constitute a human rights complaint. But if one person has been singled out as a South Asian, for instance, or if a group of South Asians have been singled out, and told that only they will not be able to qualify for overtime work, then this is adverse differential treatment.

Once we have shown discrimination, we have to show we have reason to believe that it occurred because of our group characteristics. We cannot say "I'm a Muslim, and I didn't get the job. We have to be able to say, "I believe I didn't get the job because I'm a Muslim".

Discrimination can take the form of harassment, unequal pay for the same or substantially similar work, discriminatory publications, or hate propaganda, or simply differential treatment.

Who are the Protected Groups?

Under the *Canadian Human Rights Act*, the grounds of protection from discrimination are:

- race
- national or ethnic origin
- colour
- religion
- age
- sex (includes sexual harassment, pregnancy discrimination, and transgendered discrimination)
- sexual orientation
- marital status and family status
- disability
- conviction for an offence for which a pardon has been granted

Under the *British Columbia Human Rights Code*, the grounds of protection from discrimination are:

- race
- colour
- ancestry
- place of origin
- political belief*

- religion
- marital status
- family status*
- physical or mental disability
- sex (includes sexual harassment, pregnancy discrimination and transgendered discrimination)
- sexual orientation
- age (19 - 65)*
- criminal or summary conviction offense that is not related to the employment or intended employment*

* protection on the grounds of political belief is only available in employment, and not in public services, the purchase of property, or tenancy.

* protection on the grounds of family status is available in employment, public services and tenancy, but not in the purchase of property.

* protection on the grounds of age is limited to 19 - 65, and is not available at all in services to the public or purchase of property.

* protection of the grounds of criminal or summary conviction is only available in employment, and not in public services, the purchase of property or tenancy.

Is it a Human Rights Complaint?

If all the following factors can be shown, a human rights complaint will be accepted by the relevant authority:

1. Does the complaint fit within the jurisdiction of the *Canadian Human Rights Act,* or the *B. C. Human Rights Code?*

2. Can adverse differential treatment of an individual or a group of people be shown based on a ground of protection?

3. Is the discrimination occurring in the public arena of employment, services to the public, tenancy or purchase of property?

The Human Rights Administrative Process

In human rights, the victim of discrimination is called the complainant, and the party the complaint is filed against is called the respondent. There are often two respondents or more in a human rights complaint. Because the courts have said that employers and services are

responsible for the discriminatory actions of their employees, and that they are required to provide employees and service recipients with an environment free from discrimination, the employer/service provider is the primary respondent in a complaint. Where the complaint involves repeated discrimination, such as harassment by an employee(s), that individual(s) will also be named as a respondent. Once the complainant has shown that all of the above factors are present, the responsibility or onus shifts to the respondent(s) to explain the discrimination and to rectify it if it is founded. The complainant must submit his or her claim (allegations) to the appropriate commission within 12 months of the discriminatory practice. **After April 1, 2003, provincial complaints will be filed with the B. C. Human Rights Tribunal, and they must be filed within six months of the discrimination**. In the current commission system, in both the provincial and federal jurisdictions, a number of things may happen, not always in the same order.

- the respondent will be served with the complaint and given an opportunity to reply.

- the complainant will be provided with this reply and asked to make a response.

- an attempt will be made to try to mediate the complaint. Mediation is voluntary, and all parties must sign an agreement to enter into mediation. Mediation attempts to settle the complaint without an investigation or a Hearing. It is used when the remedy being sought is one that can be worked out without moving to a more formal process.

- if the mediation fails or if the complainant and the respondent disagree about the facts of the complaint, the commission will do an investigation, and provide an investigation report. Both the complainant and the respondent can reply to the investigation report. In the Federal jurisdiction, following the Investigation Reports, complaints are sent to conciliation where a pre-hearing settlement is attempted. In the provincial jurisdiction there is a "pre-hearing settlement conference. At the end of this process the commission will either refer the complaint to the Tribunal for a hearing, or they will dismiss the complaint with written reasons.

In April, 2003, British Columbia will see a new administrative system for dealing with human rights. *The Human Rights Amendment Code* (Bill 64) will be proclaimed by regulation in early 2003. The new legislation does not affect the rights it enforces, or the government responsibility to provide information and education, but rather the way that enforcement is carried out. Specifically, changes will eliminate the B. C. Human Rights Commission, and the B. C. Human Rights Advisory Council, and provide direct access to the B. C. Human Rights Tribunal.

Complaints will be filed directly with the Tribunal, who will have the power to initiate pre-hearing mechanisms such as alternate dispute resolution, evidence disclosure and settlement conferences. The process of investigating a human rights complaint will be discontinued. Alongside the Tribunal, an independent, publicly funded legal clinic will assist in providing information, advice, representation and access to the Tribunal.

Responsibility for public information and education and for conducting research remains in Bill 64, but reverts to the Minister, and away from the B. C. Human Rights Commission. These will now be shared three ways; by the Tribunal, the Ministry of the Attorney General and by the new publicly funded legal clinic.

During the transition period a Pilot Human Rights Clinic has been put in place to ensure that all current complaints are properly represented in the existing model. The work of this clinic is being carried out in partnership by the B. C. Human Rights Coalition, and the Community Legal Assistance Society.

Human Rights Legislation, Discriminatory Publications and Hate Propaganda

There are situations where racism occurs and allegations constitute both discrimination and a criminal act. Many complaints of sexual harassment, for instance, have allegations of sex discrimination, as well as allegations involving assault. In this situation, complaints are laid under both the human rights legislation and the *Criminal Code*. When hate propaganda does not involve a crime but does constitute discrimination, it is prohibited and dealt with under human rights law.

As was previously discussed Section 7 of the *B. C. Human Rights Code* prohibits the publication of any statement, publication, notice, sign, symbol, emblem or other representation that is likely to expose a person or a group or class of persons to hatred or contempt. All of the protected groups named in the *Code* are included in Section 7.

The *Canadian Human Rights Act* has similar provisions in Section 12. Because telecommunications are in the federal jurisdiction, Section 13 of the *Act*, is specifically set up to deal with hate propaganda that is communicated telephonically. It states:

> Hate Messages
>
> 13(1) It is a discriminatory practice for a person or group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

Section 13(1) of the *Canadian Human Rights Act* was used in a case called *Taylor v. The Human Rights Commission* [1990] C.H.R.R.13 D/435 (S.C.C.). Mr. Taylor was the respondent in a case of discrimination involving hate messages recorded on the phone lines. He argued that the decision of the Canadian Human Rights Commission to order him to stop him from

continuing to play hate messages was a violation of his right to freedom of speech and expression. In its decision, the Supreme Court of Canada noted at page D/450:

> [40] ... It can thus be concluded that messages of hate propaganda undermine the dignity and self worth of target group members, ... as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality.

Hate propaganda provisions under human rights legislation follow the same rules for determination as any other form of discrimination. They look at whether the publication or communication constitutes discrimination, they look at the outcome or effect of the discrimination and not at intent, and they take a remedial approach. In *Taylor*, the Supreme Court of Canada pointed this out in a way that is quite helpful in dealing with a victim of discrimination and which avenue to follow at page D/458:

> [68] ...for attached to criminal conviction is a significant degree of stigma and punishment, whereas the extent of opprobrium connected with the finding of discrimination is much diminished and the aim of remedial measures is more upon compensation and protection of the victim. As was stated in *Canadian National Railway v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114 at 1134 [8 C.H.R.R. D/4210 at D4224, para. 33239], under a human rights regime,
>
> > It is the [discriminatory] practice itself which is sought to be precluded. The purpose of the Act is not to punish wrongdoing but to prevent discrimination.
> >
> > The last point is an important one and it deserves to be underscored. There is no indication that the purpose of the *Canadian Human Rights Act* is to assign or to punish moral blameworthiness.

Assisting the Victim of Racial Discrimination in Filing a Human Rights Complaint

In every human rights jurisdiction in Canada racial discrimination cases have the least chance of succeeding of any other human rights complaint. We are much better at articulating allegations based in sex or disability. As service providers, we are already skilled in advocacy techniques, and there are stages in a human rights complaint where victims of racial discrimination can use our support:

1. Framing the human rights complaint

Framing the human rights complaint is often the most difficult part of the process. Urge your clients to keep a written record and to solicit signed statements from any witnesses, as soon as an incident occurs. If an incident is verbal it must be repeated to constitute a complaint, if there is any unwanted physical contact, once is enough. You can help the complainant narrow the scope

of the complaint by focusing on the three factors of jurisdiction, adverse differential treatment, and placing the complaint in the public arena. The simplest way to frame allegations is in numbered, chronological order, making sure that they are not more than a year old in the case of a federal complaint, or not more than six-months old in the case of a provincial complaint after April 2003. Complainants should include a name address, and a contact number for themselves and the respondent. Any witnesses should be provided on a sheet of paper separate from the allegations. Allegations should be signed and dated by the Complainant. If you want to represent your client, or have another member of the community represent him or her, get your client to sign a letter authorizing this.

2. To mediate or not to mediate

As soon as the allegations are clear, it's time to think about the remedy. If the complainant wishes to save and heal the relationship with the respondent, mediation is an effective tool. But in order for it to be effective, all parties must enter in to it voluntarily, negotiate in good faith, and be authorized to offer an appropriate remedy. If the parties are in dispute about the facts, or if a legal interpretation is required, mediation won't work. It is not advisable for a complainant to enter into mediation without some form of representation, as success of the process is dependent on a level playing field.

3. Responding to an investigation report

Following the acceptance and investigation of a human rights complaint by the commission, the Investigation Report is the most important stage. In it will be included the original allegations, all of the respondent's submissions, interviews with witness for both sides, and an analysis of the complaint with recommendations for referral to a Tribunal or dismissal. Parties to a complaint have 30 days for responding to the Investigation Report.

N.B. After April 1, 2003, the Investigation stage previously preformed by the B.C. Human Rights Commission will be discontinued. A new fact finding or evidence gathering process will be directed by the rules and procedures of the B. C. Human Rights Tribunal.

4. If the complaint is dismissed

If the complaint is dismissed, there are limited provisions for reconsideration. If this fails, or if the complaint is dismissed in the federal jurisdiction, the complainant must go to the courts and ask a judge to review the decision.

5. Representation at a Tribunal

Federal jurisdiction - if the complaint is referred to a Tribunal in the federal jurisdiction, the Canadian Human Rights Commission actually represents the complainant, so a Commission lawyer will argue it before a Tribunal.
In British Columbia jurisdiction - representation is currently provided to the complainant throughout the Tribunal process by the Pilot Human Rights Legal Clinic. A Human Rights Legal

Clinic will be established to work alongside the Tribunal and provide representation after April of 2003 as well.

Resources to Assist in Representing a Victim of Discrimination

Enforcement: Until April 1, 2003:

B.C. Human Rights Commission
#201 – 815 Hornby Street
Vancouver, B. C.
V6Z 2E6
Telephone: 604-660-6811
Toll-free: 1-800-663-0876
Fax: 604-660-0195
TTY: 604-660-2252

British Columbia Human Rights Tribunal
Suite 1170 – 605 Robson Street
Vancouver, B.C. V6B 5J3
Telephone: 604-775-2000
Toll-free: 1-888-440-8844
TTY: 604-775-2021
Fax: 604-775-2020
Website - www.bchrt.gov.bc.ca

Canadian Human Right Commission
#420 - 757 West Hastings Street
Vancouver, B.C. V6C 1A1
Telephone Vancouver: 604-666-2251
Telephone Outside Vancouver: 1-800-999-6899
TTY: 604-666-3071 Toll-free TTY: 1-888-643-3304
Website - www.chrc-ccdp.ca

Advocacy:

Assistance with a human rights complaint:

B. C. Human Rights Coalition
#1202 - 510 West Hastings Street
Vancouver, B.C. V6B 1L8
Telephone Vancouver: 604-689-8474
Toll free: 1-877-689-8474
Fax: 604-689.7511
Website - www.human-rights-coalition.bc.ca

PART IV: CRIME AND RACISM: CRIMES MOTIVATED BY HATE, BIAS AND PREJUDICE

Hate and bias activity are part of a spectrum of intolerance that can range from harassment and communicating hate statements to physical violence and murder. Hate crime and bias motivated activity are acts directed against persons who are members of a group identified by:

- race
- religion
- language
- colour
- age
- national or ethnic origin
- sex
- sexual orientation
- physical disability
- mental disability

Hate crimes are offences that strike at the very cohesiveness of society. While all crimes are abhorrent, a hate crime is specifically committed to harm and terrify not only a particular victim, but the entire group of which the victim is a member. A unique characteristic of hate crimes is that often individuals and groups are targeted solely on the basis of who they are, not because of anything they have done. Implementing normal crime prevention measures is often not an effective tool, because victims of hate crime cannot prevent or change who they are.

Despite efforts to collect data, it has been difficult to ascertain the magnitude of hate and bias activity in Canada because these crimes are often not reported. In his paper, Disproportionate Harm: Hate Crime in Canada, [1995] Julian V. Roberts, Department of Criminology, University of Ottawa, estimates that there are approximately 60,000 hate crimes committed annually in Canada's nine major urban centres. This estimation was based on information compiled from police departments, B'nai Brith and Gay and Lesbian Community Groups. Based on these sources, Roberts also reported that 61% of hate crimes are directed against racial minorities (particularly Blacks), 23% against religious minorities (particularly Jews), 11% against gays and lesbians, and 5% against ethnic minorities.

In British Columbia, a Hate Crimes Team was created in 1996 with a mandate to ensure the effective identification and investigation and prosecution of crimes motivated by hate, and the B.C. Hate Crimes Team office was opened in 1997 to carry out this task. The role of police and Crown Counsel in tracking hate-related crime is central to fulfilling the mandate of the B.C. Hate Crimes Team.

The B.C. Hate Crimes Team includes members representing the municipal police departments, the RCMP, the Ministry of Attorney General (Criminal, Justice, Policy, Planning and Legislation and Police Services), and the Settlement and Multiculturalism Branch of the Ministry of Community, Aboriginal and Women's Services. In setting it up, there was close consultation with many community groups, the B. C. Association of Chiefs of Police, and the Provincial Committee on Diversity and Policing.

The Terms of Reference for the B.C. Hate Crimes Team include a definition of hate crime based on Section 718.2 of the *Criminal Code*:

> A hate/bias crime is a criminal offence committed against a person or property which is motivated by the suspect's hate, prejudice or bias against an identifiable group based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor.

Criminal law is based in the federal jurisdiction, but its administration is shared by both the Federal and Provincial Governments. Unlike human rights law, it is not remedial in nature; it focuses on the guilt or innocence of the person(s) accused of the crime. Whereas human rights law looks at the outcome or effect of an act of discrimination only, the criminal law must look at the intent of the accused, and must prove guilt beyond a reasonable doubt. Where a crime is determined the focus is placed on the sentencing of the accused, rather than making the victim whole. Although that is not to say that there is no consideration of the victim of a hate crime, but rather that the nature of crime is more serious than discrimination, and society has agreed that its perpetrators must be deterred.

Hate, Bias or Prejudice Incident

A hate, bias or prejudice-related incident is an act or attempt by an individual or group directed at a person, property or public order that demonstrates intentional hostility to another because of race, religion, sexual orientation, place of origin, ethnicity, language, colour, age, physical or mental disability, gender, or other identifiable characteristic.

It should be noted that most hate, bias or prejudice incidents, and most racist, homophobic acts, while abhorrent in nature, are not *Criminal Code* offences. Consideration should first be directed to institutional or community relations, or the *Human Rights Code*.

Hate, Bias and Prejudice: An Overview

The hate, bias and prejudice crime provisions of the *Criminal Code* can be separated into two categories:

1. Hate propaganda offences where the offender advocates genocide, or communicates hatred of any identifiable group. The relevant areas of the *Criminal Code* are Section 318 and 319.

2. Any other offence motivated by hate, bias or prejudice where the sentencing judge must consider this as an aggravating factor. Examples are:

   (a) assault – "gay bashing",

   (b) mischief - spray-painting a place of worship with racial or prejudicial comments,

   (c) threatening - letter or other threatening communication with biased or prejudicial overtones.

Hate, bias and prejudice crimes are offences involving intimidation, harassment, physical force or threat of physical force against a person, family, property or supporter. There is no specific offence of committing a crime motivated by hate/bias. Hate/bias criminal offences such as assault or damage to property arise because they are motivated by hate or bias against victims because of who they are as persons, not for what they have done. When criminal activity is motivated by bigotry and intolerance of others, it is regarded as a serious matter.

Hate Propaganda Offences

Hate propaganda offences are substantially different from hate/bias crimes, both in the nature of the offence and the types of groups identified. As offences, they are specifically set out in the *Criminal Code* in Sections 318 and 319, which deal with advocating genocide, or public incitements of hatred, or the willful promotion of hatred against an identifiable group.

Section 318 - Advocating Genocide

(1) Every one who advocates or promotes genocide is guilty of an indictable offence.

(2) "Genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(a) killing members of the group; or

(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

Section 318(4) - Identifiable Group

"Identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.

Section 319(1) - Public Incitement of Hatred

Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of an offence.

Section 319 (2) - Willful Promotion of Hatred

Everyone who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group is guilty of an offence.

It is hard to succeed with allegations under Section 319, because the courts have set a very high standard of proof. However, in a case called *R v. Harding* [1990] 45 O.R. (3d) 207, [1998] O.J. No. 2603, the allegations did meet all the requirements:

> The accused was charged with willfully promoting hatred against an identifiable group by publishing and distributing pamphlets and recorded telephone messages that: Muslims are a dangerous people capable of terrorism and great cruelty; Muslims are intolerant of other faiths and pose a threat; Muslims dishonestly masquerade as pacifists; and, all Muslims wish to take over Canada.

The court found that the Crown had proven beyond a reasonable doubt that the accused had clearly promoted hatred against an identifiable group. This case provides an excellent example of what a court requires before finding that such an offence was committed.

Crimes with a Hate/Bias Motivation: *Criminal Code* Sentencing Provisions

In 1996, in response to the public concerns regarding hate crimes, Parliament amended the *Criminal Code* to add Section 718.2 (a) (i), which states that:

> A court that imposes a sentence shall also take into consideration the following principles:

(a) A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence of the offender, and without limiting the generality of the foregoing,

evidence that the offence was motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.

An example of the use of this Section can be found in a case called *R. v. Miloszewski* [1999] B.C.J. No 2710 Surrey Provincial Court Registry No. 96687-03-D2. The Provincial Court Judge sentenced five individuals on a charge of manslaughter in the January 4, 1998 death of Nirmal Singh Gill. The five accused had broken into a fenced parking lot adjacent to a Sikh Temple with the intention of vandalizing automobiles parked there. All accused were under the influence of alcohol. The victim, a caretaker at the temple, came upon three of the accused in the parking lot and was attacked. The victim was later discovered forty metres from the Temple and taken to hospital where he died of his injuries. The Court found that the Crown had proven beyond any reasonable doubt that each of the accused had been motivated in their attack on the victim by bias, prejudice or hate based on Mr. Gill's race, national or ethnic origin, colour or religion. The Crown also proved this was an aggravating factor under Section 718.2 of the *Criminal Code*. The trial judge found that Section 718.2 directs judges when sentencing to give substantial weight to the aggravating factor, as the section now reflects the will of Canadians as expressed by Parliament.

Assisting the Victim of a Hate/Bias Crime in Filing a Complaint

The local police are the front-line agency dealing with hate/bias crimes, and would be the first place to contact for assistance. The B.C. Hate Crimes Team is multi-jurisdictional, and has full-time police personnel to coordinate and assist local police officers. The Team has the mandate to:

- assist in investigating all hate propaganda offences
- assist local police agencies with investigations of other crimes motivated by hate or bias
- compile a database of hate crime suspects and link this with other intelligence sources
- ensure that local police agencies are informed of hate activities in their own and surrounding jurisdictions
- develop and deliver training for law enforcement personnel
- liaise with community groups
- participate in education and prevention programs
- collect and analyze all reports of hate crime
- liaise with the Settlement and Multiculturalism Branch of the B.C. Ministry of Community, Aboriginal and Women's Services to ensure that they are informed of hate/bias incidents that are not criminal in nature

- work with other provincial and federal agencies in addressing hate/bias crime issues
- develop and deliver victim service training and awareness

The B.C. Hate Crimes Team has developed procedural guidelines for all police agencies in B. C. to ensure appropriate response to incidents motivated by hate/bias. These include:

- assign officers to respond to all incidents or reported incidents of hate/bias crimes
- ensure that officers provide assistance to the victims in accordance with the established victim services procedures
- inform the enforcement section of the Team of community concerns or potential problems
- ensure it is categorized as a hate crime and have a copy of the Police Report forwarded to the B.C. Hate Crimes Team.

Police officers have been given special training by the Team in order to properly identify a hate/bias crime or hate propaganda, to appropriately investigate a hate crime, to assist with victim services, and to clearly advise Crown Counsel of the type of offence.

Crown Counsel's role is to act on behalf of and in the public interest. Cases in which criminal activity is motivated by bigotry and intolerance of others are regarded as serious matters. When evidence establishes that there is a substantial likelihood of conviction, and that an offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, it is generally in the public interest to vigorously prosecute the offence. It is also in the public interest to seek to have the court take into consideration that motive is an aggravating factor in the sentencing of the accused.

The Crime Victim Assistance Program, Ministry of Public Safety and Solicitor General

Victim Services Division has responsibility for victim services in British Columbia. Within the Policing and Community Safety Branch of the Ministry of Public Safety and Solicitor General, the Division advises the BC Government and communities around the province on issues that matter to victims of crime. They continue to ensure the needs of victims of crime are considered in the development and implementation of legislation, policies, procedures, and operations throughout the criminal justice system.

Their mandate is to ensure that the needs of a victim of crime are acknowledged and served throughout the criminal justice process and that a victim of crime receives emotional support and practical assistance to recover from the impact of this crime. They accomplish this by:

- educating communities and governments about issues pertaining to victims of crime;
- developing effective legislation, policies, and procedures that address victim needs;

- funding programs that assist victims through the criminal justice process;
- training and supporting victim service workers; and
- administering the Crime Victim Assistance Program.

Program Areas

The Division promotes and implements the *Victims of Crime Act*. This *Act* provides significant rights to victims of crime, including:

- to be treated with courtesy, respect, and without discrimination by all justice personnel;
- to receive information on the justice system, victim services, and related legislation;
- to receive certain case-specific information on the investigation, prosecution, sentencing, and release;
- to be given a reasonable opportunity to provide victim impact information for presentation to the court before sentencing the offender; and
- to receive independent legal representation, provided free of charge where they cannot afford it, for the disclosure of their personal records.

Direct Services to Victims

Victim Services Division funds a network of victim service programs across the province to ensure victims have access to the services they need. These programs provide emotional support, information and referrals, and practical assistance to victims of crime. The Division recently completed a comprehensive review of all victim service programs to ensure that resources were targeted to meeting the identified priority needs of victims in the most effective ways possible. A funding formula was introduced to ensure consistency and equity of victim service delivery in communities throughout British Columbia.

As a result of this review, there are now two types of victim service programs:

- **Police-based Programs** serve victims of all types of crime and also assist the police and community in situations where there are multiple injuries and deaths.
- **Community-based Programs** are provided in communities with a population of 20,000 or more, and include programs addressing family and sexual violence, programs for ethno-specific and diverse communities, and programs for Aboriginal peoples (which were maintained).

Toll-free Victims Information Line

This review also resulted in the establishment of new police-based programs serving eighteen communities, new community-based programs serving nine communities, and the development of a new telephone crisis line.

The Division funds the toll-free Victims Information Line to provide victims with information and referral to services in their communities. In April 2003, the toll-free 24-hour province-wide crisis line begins operations. It will provide crisis services and address the immediate needs of victims of family and sexual violence.

Support for the Provincial Associations

In their on-going effort to provide effective and responsive services, Victim Services Division also funds two provincial associations --- Police Victim Services of BC and the BC Association of Specialized Victim Assistance and Counselling Programs. Both associations work closely with the Division to address the issues and concerns identified by the staff and volunteers from the victim service programs

Victim Notification Unit

Victims have a legal right to information about the status of an offender who has been sentenced to a provincial jail. The Victim Notification Unit was established to promote victim safety by providing victims with access to offender information through: manual notification to protected parties of changes in the custodial status of offenders; and automated notification through VINE (Victim Information and Notification Everyday), an automated telephone message system. Responsibility for the Victim Notification Unit's operations was recently transferred to the Division from the Corrections Branch.

Leadership

The Division provides advice and support to organizations, communities, and governments on issues related to victims of crime. Activities range from raising public awareness, to encouraging collaboration to ensure a more integrated approach to meeting victim needs, to delivering training sessions for victim service workers, to leading in the development of legislation and policy in many areas of criminal victimization. Examples of initiatives include:

- collaborating across governments to provide training and support for the YCJA;
- partnering with the RCMP ("E" Division) to respond to the unique needs of rural communities;
- incorporating diversity into all aspects of our programs and training; and
- developing occupational competencies for all victim service personnel.

Crime Victim Assistance Program

The Crime Victim Assistance Program replaces the Criminal Injury Compensation Program previously administered by the Workers' Compensation Board. The program is governed by the *Crime Victim Assistance Act* and the Regulations. Under the *Act*, victims injured as a result of certain crimes, immediate family members of an injured or deceased victim, and some witnesses may be eligible for financial assistance and/or benefits.

The program has been developed in response to the changing needs of victims, who may require both financial support and various services and supports to aid in their recovery from the physical and psychological effects of their victimization. The benefits offered through the Crime Victim Assistance Program are intended to help victims and others recover from the effects of violent crime so that they may participate fully and safely in their communities.

An Overview of the *Crime Victim Assistance Act*

Based on a financial assistance model, the new *Act* will help victims, immediate family members and eligible witnesses with the costs associated with their victimization, rather than providing compensation for pain and suffering. Victims may be eligible for the following benefits:

- medical or dental services or expenses
- disability aids
- vocational services or expenses
- repair/replacement of damaged or destroyed personal items (not stolen property)
- vehicle modification or acquisition for disabled victims
- maintenance for a child born as a result of the proscribed violence
- lost earning capacity
- prescription drug expense
- counselling services or expenses
- protective measures, services or expenses for high risk victims
- home modification, maintenance or moving expenses
- income support
- transportation and related expenses

In addition, immediate family members who experience economic loss or psychological harm, or a minor child of a deceased victim may be eligible for assistance. Witnesses to a crime may be eligible for counseling services and related prescription drug expenses.

The Crime Victim Assistance Program offers the following points to assist you in helping victims:

- Expect victims to have physical and emotional reactions
- Give victims a place of safety or shelter to stay
- Assist victims in finding appropriate counseling and medical help
- Attend police interviews with the victim
- Listen without judgment to the victim
- Treat communications with the victim in confidence
- Attend court with the victim
- Assist in arrangements such as funerals, insurance details, filing claims and certificates
- If the crime is high profile, assist the victim in dealing with the media

Communities and Individuals Targeted by Hate Groups

We spoke earlier in the manual about drawing the line between prejudice/bias that constitutes a state of mind, and discrimination, which constitutes a behaviour or action, causing legal rights to enter the arena. For individuals and communities targeted by hate groups, entrenching that line can be a matter of life and death. Organized hate groups are alive and well, speaking in our communities, and influencing our youth. As service providers we owe it to our community to educate ourselves about, monitor and report organized hate groups. Hate symbols, hate crimes, and discrimination based on hatred or contempt should always be reported to the B.C. Hate Crimes Team, the local police, or one of the community organizations working in this area. Some of these organizations are able to come to your community, and help you identify organized hate groups, and to form coalitions to more effectively deal with them.

Representation of the victims of hate groups must be incorporated into all aspects of any anti-racist strategy, which involves developing a defense before an incident happens. In his paper, Organizing Against Hate: Community and Government Responsibilities, Alan Dutton of the Canadian Anti-racism Education and Research Society offers some guidelines to assist in containing hate groups:

> Support individuals and communities targeted by hatred: This may involve neighbourhood watch programs to protect synagogues, churches, gurdwaras, and homes of individuals under attack. It may also involve the protection of individuals who are required to give evidence against hate groups in court, or supporting community activists who speak out against hate.
>
> Create a moral barrier against hate: Speaking out shows that not everybody in the community supports hate, and gives us a better chance of preventing public meetings organized by hate groups taking place in our community, and makes these groups less attractive in their attempts to recruit youth.
>
> Document hate group activity, and report it to the B.C. Hate Crimes Team.

Resources for Assisting a Victim of a Hate, Bias and Prejudice Crime

For victims of hate crimes, and for reporting hate activity:

B. C. Hate Crime Team
C/o Major Crimes Section – CIU
"E" Div. HG – Surrey Satellite
Complex 12992 – 76th Avenue
Surrey, BC V3W 2V6
Telephone: 604-660-2659
Toll-free number: 1-800-563-0808
Email: sean.mcgowan@rcmp-grc.gc.ca

Victim Services Division
Ministry of Public Safety and Solicitor General
#302 – 815 Hornby Street
Vancouver BC V6Z 2E6
Telephone: 604-660-5272
Fax: 604-660-5340
Email: VSDVictimsServices@gems2.gov.bc.ca
Vancouver Police Department Victim Services Unit – 604-717-2737

For a complete guide to Victim Services throughout British Columbia go to the Victim Services Directory on the website of the Ministry of Public Safety and Solicitor General.

PART V: REMEDIES FOR VICTIMS OF RACISM

Throughout this handbook, whether discussing victims of racism within the confines of institutions, or the public arena of the human rights jurisdiction or the criminal realm of hate propaganda and hate motivated crimes, there has been a common thread. Victims of racism are victimized solely because of who they are, and not for anything they have done. An act of racism is perpetrated against a whole group of people, not just the victim of any specific incident. And an act of racism causes the whole community harm, be that community the workplace, the community service, the neighbourhood or the city. In assessing appropriate remedies each aspect of the community must be included, as well as the individual victim.

When Canada signed the U.N. *Declaration on the Elimination of All Forms of Racial Discrimination* in 1963, our federal, provincial and territorial governments agreed that everyone shall have the right to an effective remedy and protection against any discrimination through independent tribunals competent to deal with such matters. In British Columbia, we act out our international obligation through Section 37(2) of the *B.C. Human Rights Code*, which states as follows:

> If the member or the panel [Tribunal] determines that the complaint is justified, the member or panel
>
> a) must order the person who contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,
>
> b) may make a declaratory order that conduct of the type complained of, or similar conduct, is discrimination contrary to this Code,
>
> c) may order the person who contravened this Code to do one or both of the following:
>
> (i) take steps, specified in the order to ameliorate the effects of the discriminatory practice;
> (ii) adopt or implement an employment equity program or other special program;
> (iii) to ameliorate the condition of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this Code, and
>
> (d) If the person discriminated against is a party to the complaint, or is an identifiable member of a group or class of persons on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:
>
> (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;

(ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;

(iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

You will notice that the *Code* provides not just a remedy for the individual victim of discrimination, but also a variety of remedies that are systemic in nature, even to the point of requiring an employer set up an employment equity plan.

Internal policies in institutions and organizations tend to mirror the human rights legislation, as they are employers' and service providers' way of accepting their responsibility for the environment in which they do business. The focus on remedy is to make the victim of discrimination whole, and take the necessary steps to prevent the discrimination from reoccurring.

As with human rights legislation, a victim of hate/bias crime also has the right to be made whole. Where the human rights legislation refers to the right of the complainant to recover expenses incurred by the discrimination, the Crime Victim Assistance Program helps the victim of crime to recover compensation for injuries, lost wages and other expenses incurred. Victims of crime are also able to complete impact statements which affect the sentencing of the offender.

If the victim of the hate/bias crime has suffered financial losses as the result of the crime, the court may order the offender to pay restitution to the victim. The victim has the right to receive a copy of the restitution order, and to enforce it in court if necessary.

All victims of racial discrimination and/or crime should be encouraged to access their legal rights and remedies under existing legislation. However, it is becoming clear that legal remedies often provide too little too late. The adversarial nature of litigation often divides the community instead of healing it, and experience has shown us that the longer a victim of discrimination must wait for a remedy, the greater the chance that it won't succeed. A more holistic approach is required which involves the whole community. Initial steps are being made in this area in the form of alternate dispute resolution, in mediation programs in the human rights arena, and victim/offender reparation programs in the criminal justice system. These types of programs are often referred to as "Restorative Justice".

The traditional remedial focus with regards to discrimination has been on the victim, or the Complainant who files against a perpetrator, and a legal process ensues outside of the workplace, service or community in which the allegations have occurred. The investigation involves only those two parties, and when a determination is reached, the remedy is applied accordingly.

Restorative Justice programs focus on the whole community where the act of discrimination occurred. They look at all relationships and roles within that community, and try to fashion a

remedy that is satisfactory to all parties. This focus is proving to be very successful when utilized in internal policies, as the antidote to discrimination in the workplace and in public service is inclusivity and equality. It can be effective as well in small or heterogeneous communities where all the parties must continue in a relationship together regardless of any discriminatory act. Although it has had some success in the criminal justice system, victim/offender reparation programs will only be offered where the offence is minor, as exclusion of the offender from the community is often necessary to achieve an appropriate remedy where a crime is more serious.

If you are working with a victim of racism who would prefer to try attaining a remedy through some form of alternate dispute resolution, it is important to remember that all the rights available to him/her through traditional legal avenues must still be forthcoming. The key to alternate dispute resolution is in the nature of the future relationship of the parties. It attempts to help them find a way to go on together, rather than severing the relationship. And it requires the whole community to assist in creating an environment where that is possible.

PART VI: COMMUNITY DEVELOPMENT: INVOLVING THE WHOLE COMMUNITY IN RESPONDING TO RACISM

Community development is the critical link in any anti-racist strategy. Institutions, companies and organizations need to feel supported in the community when considering implementing preventative programs. Legal rights and remedies for victims of racism have not yet met the goals of our international obligations. They need to be constantly assessed and reformed when necessary, not just by the courts, but by the public will through the community. Human rights principles are not as understood or accepted as they must be if we are to achieve equality for everyone in this province. Perpetrators of hate crimes, and hate groups must one day understand that there is no place for them in our society. All of this can be accomplished by building organizations and coalitions who work together to eliminate racism in the community.

Pulling the Community Together

Most communities have in place already some organizations that have as their mandate human rights or anti-racist activities. These are the organizations who will have the most interest in working in a coalition. Professional organizations, such as the B.C. Teachers' Federation and the B.C. Association of Social Workers have province wide human rights committees and programs, and will have a representative in your community. If there is no representative, you can ask to have one appointed. All unions and labour councils have a human rights or anti-racist or community action committee, as do all political parties.

The first step in organizing the community is to do an inventory of all organized sectors. Try not to leave anyone out because of subjective reasons. The whole community has an interest in the elimination of racism. Develop a list of all organizations who show an interest in working on an anti-racist strategy, and a list of all organizations that would be interested with some assistance. For instance, does your city, municipality, or village council have a race relations or diversity committee? If it doesn't then getting one put in place can be one of the first issues of your coalition. Municipalities employ a large number of people in any community, and manage licensing for a variety of local businesses. They often decide whether or not hate groups are permitted to speak in public venues.

Overall Goals and Objectives

Work out a mission statement that everyone can agree with that reflects your overall goals and objectives. A mission statement should include everyone who wants to work on the elimination of racism, and the achievement of equality. Remember that everyone brings different skills and perspectives in a coalition, and the trick is to find a role for everyone to play regardless of their differences. The more positive and open the wording is of your mission statement, the more likely it is to attract a large diverse group of people.

Building Community Resources and Responses

We have already discussed building an inventory of organizations who might be part of a community coalition to develop an anti-racist strategy. There is other information as well that you can research and put together to help you build capacity in your coalition:

- Develop a list of resources to assist victims of racism, and get to know the people who do the work. This would include any community group who includes victim support in its mandate. It would include as well a list of counseling services for victims of racism, supportive officers with the local police, and human rights advocates, including your local community legal aid office.

- Develop a list of people with the authority to create change in the community. You may be working with the school district, the municipality, a local business or the provincial or federal government. If you are working with the school district for instance, you will need to know the person who is elected to the local school board, the Superintendent of Schools, perhaps principals and vice-principals, and anyone there who has a commitment to anti-racism. Invite them to talk to your coalition, or meet with your members. If you can establish a relationship with people in authority before an incident happens, you will have more credibility and influence in resolving issues when they arise.

- Develop an inventory of the skills of coalition members. When people first come to your coalition, find out what they like to do, and what connections they may have.

- Develop an information package on yourselves for the media. Include a list of your members and spokespeople and your mission statement. It helps as well if you include some photographs. Tell the media that you have the expertise to respond to issues when they arise. Always respond to the media when they cover issues regarding racism, regardless of whether the response is positive or negative. It's helpful as well to meet with editorial boards from time to time to assist them in understanding your anti-racist perspective.

Prioritize Issues

What are the most important issues in your community? While you may be in a situation where prioritizing issues is a luxury, the best way to determine these, unless you have come together to deal with one compelling issue, is to brainstorm with as many people as you can bring together. When prioritizing these, take into account the following factors:

- the size of the issue: When you are starting to build your community, you are more likely to be successful, if you choose a small issue, that captures a large amount of interest, and requires the least amount of resources. For instance, an aboriginal land claim issue cannot

be resolved by a community coalition in a short period of time. But establishing a municipal race relations or diversity committee might be achievable, and once established, it is a voice with responsibility that could advise on a land claim issue.

- the amount of public interest in the issue: As well as taking on an issue so that it will be resolved, you are also educating and building the community. You will have more success if you choose an issue that builds bridges in the community, rather than divides it.

- the amount of resources available: When you have been in the community for a while, your coalition will be respected and credible. People will provide you with resources. But when you first start out, plan on choosing an issue that is not financially prohibitive.

- your mission statement: Make sure the issue you select, if you are successful, fits within the mandate of your mission statement. Periodically revisit your mission statement.

Developing Issues in the Community

Define the Issue

When you have selected the issue that you want to work on, try to define it in a way that will catch public interest. This definition will form the basis for the public education that you will want to engage in, for press releases, and media interviews, and letters to the editor. Here is a checklist to use when defining your issue:

- Is the issue easily understood by the community?
- Is the issue dynamic enough to catch the interest of the community?
- From the history of this issue in the community, is it defined in such a way that it has the best chance of succeeding?
- Is the issue broad enough to gain the support of the allies you need to succeed?
- Are you initiating action (positive definition that assumes unity), or reacting (negative definition that reinforces victimization and assumes division)?
- Is your goal achievable within the amount of effort and time you can be expected to have available?
- What criteria will be used to determine whether or not your issue is successful?

Research

Once there is a clear understanding of the issue, you need to assess what information is necessary to succeed. Design your research around the five W's:

Who: Who are the people most affected by the issue, and the people who have an interest in seeing the issue resolved?

Who are the people who are open to persuasion with regards to your issue: For instance, an individual who supports the notion that certain groups have been held back in employment due to racial discrimination, but does not support employment equity because he or she believes it is "reverse discrimination". If the person is an able-bodied Caucasian, she or he might believe that employment equity gives an unfair benefit to one group over the other, and equality means treating everyone the same. If the person is a person of colour, she or he might believe that if she or he gets a job or promotion, everyone will think it's because of employment equity, and not because of his or her skill.

Who opposes you? What are their arguments, interests and goals?

What: What is the issue really all about? What discrimination are we trying to resolve? What do we need to know in order to be informed?

Where: What is the scope of the issue? Is it relevant only in your community, or the province, or across the country? If it is a province wide issue, but a priority in your community, how can you narrow the issue? To return to employment equity, how will you deal with it in your community, when it requires a change in provincial legislation? If you narrow the scope, you can work on a municipal pilot, which, if successful you can share with other communities, and eventually influence the public province wide to seek a change in the legislation.

Why: Why are you engaging in the issue? How does it move towards the goal of your mission statement?

What: What is your remedy? Is it practical and possible?

Designing a Strategy

A successful strategy should broaden your coalition and provide a role for every stakeholder. It helps as well to develop your issues within a clear time framework, so that everyone can plan their contribution. It's sometimes helpful to design your issue by working backwards from the time you want to be successful. For instance, if you are working to get a municipal race relations or diversity committee in place, you might decide that you would like it inaugurated by the International Day to Eliminate Racism, on March 21st. Given your community, and the past history of anti-racist education, what things would you need to accomplish to gain enough public support? Work those things backwards, step by step on a calendar, so that you have a timeline to work with.

The activities you engage in to accomplish your goal will be most effective if brainstormed by all the stakeholders. The more diverse those stakeholders are, the further you will be able to reach into the community. If you are organizing to change a policy, procedure or law that is discriminatory in nature, always remember that the price of a successful attack is a constructive alternative. Be open to any strategy that is suggested, as long as it is lawful, and doesn't divide the stakeholders. It is better to design a strategy that doesn't go out of the experience of the people participating, as they will feel uncomfortable and may leave the coalition. When you are designing a strategy, try to take care of the basic needs of the participants: childcare, family hours, work hours, etc. Here are some of the more common events used in building an issue:

- articles in the newspaper
- meetings, educational with a guest speaker, component of other meetings at work, in the union, in community organizations. (Always have name and address sheet available to develop contacts.)
- placing press clippings, articles on bulletin boards throughout the community
- pamphlets, buttons, etc.
- petitions which explain the issue and ask people to make a commitment
- dinner nights, socials, pot lucks, etc.
- celebrating events and anniversaries of rights and obligations

The more sectors you can affect at the same time, the more effective you will be. For instance, if people hear your message at church, at the parent teacher meeting, and at work as well, they will understand it to be community based and not a part of a "special interest group".
Saul Alinsky, in his book Rules for Radicals [1971], developed some rules of strategy, which make as much sense today as they did when they were written in the 1970's:

- Never go outside of the experience of your people
- Always make your opposition live up to its own book of rules
- A good strategy is one that people enjoy
- A strategy that drags on too long becomes a drag
- Keep the pressure on
- The price of a successful attack is a constructive alternative

Before you Leap

Before you actually commence your strategy, try to predict what reaction you will receive to each of the events you have selected. What are the most likely outcomes? Does this require rethinking the strategy? Is there a possible outcome that will require more research?

Evaluation

When you've completed your issue to the best of your ability, always take time to celebrate. And following that, it's time to evaluate. What effect has your strategy had on:

- your coalition membership? It should be larger, more diverse and more cohesive.

- the public? Regardless of whether or not the issue was won, the public should be more aware.

- the media? The media should now know who you are, and be somewhat more knowledgeable about your issue.

- your issue? Is it resolved? Winning the issue is not as important as the other factors - you may just have to choose another one. Or, you may have to go at it another way next time. But if you have built your membership, made the public and the media more aware, you've succeeded in community development!

CONCLUSION

The elimination of racism requires a long term strategy, but it is possible to push the train along the track a little faster with the involvement of the whole community. Service providers throughout the province are in an excellent place to help facilitate this. By assisting in the development of strong institutions, companies and organizations we can improve our environment as employees and extend this knowledge to our clients. Assisting the victims of racism requires that we work together to protect the rights we've gained, and to expand those rights in the future.

APPENDIX

LEGISLATION CITED

International Convention on the Elimination of All Forms of Racism, [1969] Articles 1, 4

Canadian Charter of Rights and Freedoms, (The Constitution Act, 1982, Part I) Section 15, 27

Human Rights Code of British Columbia, (R.S.B.C. 1996, c.210 as amended), Section 7

Criminal Code of Canada, Sections 318-319

Canadian Human Rights Act, (R.S.C. 1985, c.H-6, as amended) Sections 12, 13

Employment Equity Act (S.C. 1995, c.44, as amended)

REFERENCES CITED

Alinsky, Saul [1971] *Rules for Radicals*, Random House (pp.127-130)

Cohen, Tannis [1984] *Race Relations and the Law* (pp. 3-4)

Federation of Canadian Municipalities [1993] *Dealing with Diversity - Multicultural Access to Local Government* (page 7)

Roberts, Julian V. [1995] *Disproportionate Harm: Hate Crime in Canada*, Department of Criminology, University of Ottawa, (Department of Justice Canada Working Document 1995-11e

RESOURCES

AMSSA (Affiliation of Multicultural Societies and Service Agencies of B. C.) [2001]. *Long-term Anti-racism Strategies: A Guide to Developing Effective Community Projects*

Brager, George and Sprecht, Harry [1982]. *Community Organizing*, Columbia University School of Social Work

B. C. Human Rights Coalition [March 2001], *Human Rights: Your Rights to Know* (4th edition)

Canadian Heritage Multiculturalism [December 1998] *Hate and Bias Activity in Canada*

Canadian Human Rights Reporter

Canadian Labour Congress, National Anti-Racism Task Force [October 1997]. *Challenging Racism: Going Beyond Recommendations*

Carswell, *Racial Discrimination: Law and Practice* [1995]. Human Rights Research and Education Centre

CCH Canadian Ltd., *Workplace Equity Guide* [1999]

Cross Cultural Communications Centre [1992]. *Developing an Anti-Racist Action Plan*

Dutton, Alan [1998]. *Organizing Against Hate: Community and Government Responsibilities*, Canadian Anti-Racism Education and Research Society

Harper, Ernest B. and Dunhern, Arthur [1985]. *Community Organization in Action*, Association Press

Lancaster's Human Rights and Charter Reporter

Ministry of Attorney General (British Columbia). Reports and Publications. (2001, February 21) *End Hate Crime*. Retrieved December 2, 2001, from http://www.ag.gov.bc.ca/public/end_hate_crime/index.htm

Ministry of Attorney General (British Columbia). Court Services. (2001, June 28) *Being a Witness: Your Contribution to Justice*. Retrieved December 12, 2001, from http://www.ag.gov.bc.ca/courts/beingawitness.htm

Ministry of Attorney General, Victim Services Division (British Columbia) [1995]. *Victims of Crime. Victim Service Worker Handbook*

Ministry Responsible for Community, Aboriginal and Women's Services (British Columbia) [March 1998]. *Challenging Systemic Racism Forum Crime. Victim Service Worker Handbook*

O'Donnell, Susan and Teed, Jane [1998]. *Human Rights in British Columbia. Introduction to Law in Canada* Captus Press, York University

O'Donnell, Susan [1999]. *Discrimination, Harassment and the Law: A Facilitator's Guide*, University College of the Cariboo.

Prince Rupert RCMP On-Line Detachment, Victim Services Division. (2000, January 7) *The Victim Assistance Program*. Retrieved December 11, 2001 from http://www.citytel.net/rcmp/victimsr.htm

Prince Rupert RCMP On-Line Detachment, Victim Services Division. (2000, January 7) *North Coast Victim Support Services*. Retrieved December 11, 2001 from http://www.citytel.net/rcmp/victimsr.htm

University of Victoria, Faculty of Law [1998]. *Hatred in Canada, Perspectives, Action and Prevention*

Vancouver Police Department, City of Vancouver. *Victim Services Unit: Victims of Crime Act* (2001, September 19). Retrieved December 9, 2001, from http://www.city.vancouver.bc.ca/police/victimservices/CrimeAct.htm

Cases Cited

McKinnon v. Ontario (Ministry of Correctional Services) [1996] C.H.R.R. NP/96-131 (Ont.Bd.Inq.)

National Capital Alliance on Race Relations v. Health and Welfare Canada [1997], 28 C.H.R.R. D/179, at page D/210

Taylor v. Canadian Human Rights Commission [1990] C.H.R.R. 13 D/435 (S.C.C.), at page D/450

R v. Harding [1990] 45 O.R. (3d) 207, [1998] O.J. No. 2603